

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

JOHN DUNCAN, #180841,)
)
Plaintiff,)
)
vs.) CIVIL ACTION NO. 2:07-CV-634-MHT
)
JOHN CUMMINGS,)
)
Defendant.)

ANSWER

COMES NOW, the defendant, **John Cummings**, by and through Troy King, Attorney General for the State of Alabama, via undersigned counsel, and in accordance with this Honorable Court's Order dated July 12, 2007, answers plaintiff's complaint as follows:

1. Defendant admits that plaintiff's mattress was removed from his cell during the day.
2. Defendant denies all other claims in plaintiff's complaint.
3. Defendant denies denying plaintiff access to courts.

DEFENSES

1. Defendant asserts sovereign immunity.
2. Defendant asserts qualified immunity.
3. Warden Cummings denies violating Mr. Duncan's First, Eighth or Fourteenth Amendment rights.

4. Defendant cannot be held liable in a §1983 action based on respondeat superior.
5. Defendant asserts mistake of fact.
6. Defendant asserts mistake of identity.
7. Mr. Duncan fails to state a claim upon which relief may be granted.
8. Defendant reserves the right to raise additional defenses as discovery progresses.

RESPECTFULLY SUBMITTED,

TROY KING
ATTORNEY GENERAL
KIN047

/s/ J. MATT BLEDSOE
J. Matt Bledsoe (BLE 006)
ASSISTANT ATTORNEY GENERAL

OF COUNSEL:

OFFICE OF THE ATTORNEY GENERAL
11 South Union Street
Montgomery, AL 36130
(334) 242-7443
(334) 242-2433 (fax)

CERTIFICATE OF SERVICE

I hereby certify that I have, this the 7th day of February, 2008, electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, and that I have further served a copy of the foregoing upon the Plaintiff, by placing same in the United States Mail, postage prepaid and properly addressed as follows:

Mr. John Duncan, #180841
Bullock County Correctional Facility
P.O. Box 5107
Union Springs, AL 36089

/s/ J. MATT BLEDSOE
OF COUNSEL